

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.980 of 2007

M/s.India Comnet International,
Unit 21, Block 3, SDF Phase 1,
Madras Export Processing Zone,
Tambaram, Chennai-600 045.

..Appellant/Appellant

Vs.

The Income-tax Officer,
Company Ward-II(1),
121, Nungambakkam High Road,
Chennai-600 034.

..Respondent/Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'A', Chennai in I.T.A. No.2512/Mds/2005 dated 29.12.2006, for the assessment year 2002-03, against the order of the Commissioner of Income Tax (Appeals)III, Chennai in ITA.No.67/2005-06/A-111 dated 30.8.2005 against the order in G.I.No./P.A.No.1X1020/AAACI8019E dated 8.3.2005 on the file of the Income Tax officer company ward-II(1),Chennai.

For Appellant : Dr.Anita Sumanth

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the assessee, against the order of the Income Tax Appellate Tribunal, Bench 'A', Chennai in I.T.A. No.2512/Mds/2005 dated 29.12.2006, raising the following substantial question of law:-

"Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the interest income derived by the appellant is not eligible for relief under Sec.10A of the Income-tax Act?"

2. The facts leading to the above substantial question of law are as under:

The assessee is a Private Limited Company established under the Madras Export Processing Zone and is engaged in the business of development and export of software. It is a 100% Export Oriented Unit. The relevant assessment year is 2002-2003 and the corresponding accounting year ended on 31.03.2002. The assessee filed Return of income on 31.10.2002 admitting 'nil' income after claiming exemption under Section 10A of the Income-tax Act ("Act" in short), amounting to Rs.8,34,84,900/-. The Return of income was processed under Section 143(1) of the Act on 19.03.2003 accepting the income returned, determining a refund of Rs.20,52,365/-. Later the assessment was taken up for scrutiny to recompute the exemption under Section 10A of the Act by excluding the interest receipt of Rs.92,06,602/-. Notice under Section 143(2) of the Act was issued and the assessment was completed under Section 143(3) of the Act by adding to income, the interest on deposits amounting to Rs.92,06,602/-. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) confirmed the order of the Assessing Officer that the interest income of Rs.92,06,602/- does not qualify for exemption under Section 10A of the Act and the same to be assessed to tax under the head "income from other sources". Hence the appeal was dismissed. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal followed this Court judgment in the case of Commissioner of Income-tax Vs. Menon Impex P. Ltd. [2003] 259 ITR 403 (Mad) and dismissed the appeal filed by the assessee. Hence the present tax case by the assessee.

3. Learned counsel appearing for the assessee submitted that the income is attributable to funds derived from export business and the funds were retained in the bank to meet the exigencies of the business and that the entire transaction constitutes an integrated whole and the same could not be bifurcated into different areas. It is further submitted that Section 10A of the Act is a beneficial provision and has to be construed liberally and relied on the Supreme Court judgment in the case of Commissioner of Income-tax Vs. Baby Marines [2007] 290 ITR 323 (SC).

4. Heard the counsel. In this case, the interest income was earned out of the export realisation and kept in Foreign Currency Deposit Account, as permitted by FERA under Banking Regulations. Hence, it is clear that there is no direct nexus between the interest earned and the Industrial Undertaking. The interest received by the assessee is of deposit made by it in the banks. It is that deposit which is the source of income. Therefore the assessee is not entitled to relief under Section 10A of the Act. In the case of Commissioner of Income-tax Vs. Menon Impex

P. Ltd. [2003] 259 ITR 403 (Mad), this Court considered the scope of Section 10A of the Act and held as follows:-

"In this case the interest received by the assessee was on deposits made by it in the banks. It is that deposit which is the source of income. The mere fact that the deposit made was for the purpose of obtaining letters of credit which letters of credit were in turn used for the purpose of the business of the industrial undertaking does not establish a direct nexus between the interest and the industrial undertaking."

The Tribunal followed the principles enunciated by this Court's judgment cited supra and came to the correct conclusion that the interest income of Rs.92,06,602/- does not qualify for exemption under Section 10A of the Act. Also it is seen from the records that the said amount was assessed under the head "income from other sources". The reasons given by the Tribunal are based on valid materials and evidence and there is a concurrent finding that it is not the export income and that the said interest was rightly assessed under the head "income from other sources". The assessee also had not brought to our notice any contra judgment or any other valid materials or evidence, to take a different view, except relying on the Supreme Court judgment in the case of Commissioner of Income-tax Vs. Baby Marines [2007] 290 ITR 323 (SC), wherein it was held that exemption and beneficial provisions should be construed liberally. There is no quarrel regarding the proposition and the earlier judgment of this Court cited supra, had interpreted Section 10A of the Act after hearing the arguments and held that there is no direct nexus between the interest and the Industrial Undertaking and hence the assessee is not entitled to relief under Section 10A of the Act. In the present case, the assessee received the export proceeds and the same was deposited in the bank and the income was derived from the said deposit and hence here also there is no direct nexus between the interest and the Industrial Undertaking. Hence, this Court judgment in the case of Commissioner of Income-tax Vs. Menon Impex P. Ltd., cited supra, is squarely applicable to the facts of the present case.

5. Under the circumstances, we find no error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence, no substantial question of law arises for consideration of this Court and accordingly, the tax case is dismissed. No costs.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
Income-tax Appellate Tribunal, Bench "A",
Chennai.
2. The Commissioner of Income-tax (Appeals) III,
Chennai-34.
3. The Income-tax Officer,
Company Ward II(1),
Chennai.
4. The Assistant Registrar,
Income Tax Appellate tribunal,
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai.

+1 cc to M/s.Anitha Sumanth, Advocate Sr.No.40012.

ASM(CO)
dcp/19.7.07

T.C.(A) No.980 of 2007



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